

1-1-2004

## Crossing the Language and Culture Divide- The Challenges of Educating Asian Law Students in a Globalising World

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### Recommended Citation

Freeland, Steven; Li, Grace; and Young, Angus (2004) "Crossing the Language and Culture Divide- The Challenges of Educating Asian Law Students in a Globalising World," *Legal Education Review*: Vol. 14 : Iss. 2 , Article 10.  
Available at: <https://epublications.bond.edu.au/ler/vol14/iss2/10>

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## TEACHING NOTE

# Crossing the Language and Cultural Divide – The Challenges of Educating Asian Law Students in a Globalising World

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*Steven Freeland*,\* *Grace Li*\*\* & *Angus Young*\*\*\*

### Introduction

Following the March 2004 annual meeting of the National People's Congress in China, the country's Parliament formally approved 13 constitutional amendments, including some that addressed the issues of private property ownership and human rights.<sup>1</sup> These amendments contain radical changes to the underlying legal framework that regulates life in China. The notion of private property ownership, whilst familiar to most developed and, indeed, many developing countries, represents a significant departure from the system of law that emerged as a result of the rise to power of the Communist Party in the 1940s. Despite ongoing debate about the nature of human rights and arguments of cultural relativism, the ongoing incorporation of basic international human rights standards into the domestic law of countries throughout the world highlights the increasingly "global" nature of many important issues.

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1 C Buckley, "China Approves Amendments to Constitution on Human Rights", *The New York Times* (15 March 2004): [www.nytimes.com](http://www.nytimes.com) (accessed 17 March 2004).

These developments take place for many reasons. There are complex political, cultural, social and economic forces at play. It would be naïve to suggest that significant legal change takes place in a vacuum of reassessment simply for the sake of “change for the better”. Nevertheless, legal reforms represent further examples of what some might regard as a “trend towards convergence” in law, which itself stems from the seemingly inevitable path of globalisation. As the discourse between governments and their citizens increases to an inter-dependent basis, accumulation of knowledge, experience and expertise in “foreign” concepts of law – as well as in many other areas – will inevitably follow.

We see this convergence not only at the domestic level. As the regulation of international issues becomes supranational with the establishment of international courts and tribunals, so must the rules and procedures governing these institutions take into account notions of law from a variety of legal systems. For example, the 18 judges who preside in the recently established International Criminal Court (ICC) come from legal systems as diverse as England, France, Costa Rica, Samoa, Republic of Korea, Mali, Brazil, Canada, Finland, Latvia and other countries. This may lead to differences of opinion as to the application of legal principles to a particular case<sup>2</sup> and also requires that the ICC’s rules of evidence and procedure<sup>3</sup> represent an “amalgam” of common law and civil law concepts, following in the footsteps of the two ad hoc tribunals established during the 1990s by the United Nations Security Council.<sup>4</sup>

All of this adds force to the advantages associated with the internationalisation of legal education; the rapid rise in the number of overseas students who seek to undertake at least a part of their university studies in a foreign country. Over recent years, large numbers of law students from China, Hong Kong, Taiwan, Thailand, Malaysia, Indonesia and

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2 The International Criminal Tribunal for the Former Yugoslavia highlighted the different approaches to procedural questions that arise through the diverse legal backgrounds of judges in an international court: see Prosecutor’s Motion Requesting Protective Measures for Victims and Witnesses, *Prosecutor v Tadic*, Case No IT-94-1-T (10 August 1995) and Decision on Prosecutor’s Appeal on Admissibility of Evidence, *Prosecutor v Aleksovski*, Case No IT-95-14/1-AR73 (16 February 1999).

3 Rules of Procedure and Evidence of the International Criminal Court (Doc ICC-ASP/1/3).

4 International Criminal Tribunal for the Former Yugoslavia, established by United Nations Security Council Resolution 827 (1993) on 25 May 1993 and the International Criminal Tribunal for Rwanda, established by United Nations Security Council Resolution 955 (1994) on 8 November 1994.

other countries have undertaken legal studies in overseas institutions. In Australia the growth in the number of Asian students undertaking degrees in law over the past decade has been staggering. This phenomenon gives rise to a number of important issues.

A decade ago D J Phillips published discussions on this issue in a legal education journal. His first article gave an overview of the implications with regard to foreign students coming to Australia to pursue post-graduate degrees and suggested academics should modify the way they teach these students.<sup>5</sup> His second article argued that academics should develop cross-cultural sensitivity in teaching overseas students. These articles were not directed at legal education per se and solutions offered were ethnological.<sup>6</sup>

In this teaching note, we set out some of the important reasons why Asian students have seen it as necessary to seek to further their legal education in countries such as Australia. This involves an assessment of the type of skills required of those Asian students undertaking law in Australia and how the educative process should continue to evolve to meet these needs. This note then sets out the experiences in two particular situations, the teaching of Business Law to Asian Students and an innovative Australian postgraduate program taught in Mandarin. These experiences further highlight the need for Australian universities to carefully consider their strategies when offering courses for Asian students, particularly in view of the challenges posed by the continuing development of globalisation in the 21st century.

## The Need for a “Globalised” Asian Law Student

International events in recent times, such as the expansion of the World Trade Organization, the Asian Economic Crisis, and the September 11 attacks in the United States have highlighted the need for cooperative and multilateral approaches to address issues of “global” concern. Questions related to human rights, the environment, public and corporate governance, as well as the need for an effective “international” justice system, have become important themes for many governmental and non-governmental organisations.

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5 D J Phillips, “University Academics Responding and Adjusting to the Increasing Numbers of Cross Cultural and Overseas Students” (1992) 3(2) LER 123 at 123-153.

6 D J Phillips, “Solutions to the Dilemma and Concerns of Teaching International Students in Universities” (1994) 5(1) LER 47 at 47-66.

With the increased inter-dependence of States, it is imperative to develop co-operative and multilateral solutions to these issues. Areas such as human rights, international trade, the environment, international criminal justice, natural resources, indigenous rights and the common heritage of mankind all require a global approach. As trade and commerce proliferates, a standardisation of commercial arrangements becomes increasingly necessary. Inevitably, all of this will impact on domestic laws. No longer can the lawyer disregard international law principles in the context of domestic disputes. It is in this context that the mobility of Asian law students has increased dramatically.

In a recent address in Melbourne,<sup>7</sup> Justice Michael Kirby noted a tendency towards “the utilisation of universal human rights law in constitutional elaboration”, an approach that can be found in many domestic law jurisdictions, including several countries within Asia. This is an irreversible process and there can be no doubt that domestic law in Asia will be increasingly influenced by international legal norms.

As a corollary, domestic law principles and procedures are also increasingly relevant in the development of these international processes. A global approach inevitably leads to convergence of certain components from the many domestic legal systems of the world in order to establish appropriate supranational regulatory bodies, tribunals and courts.

As a result, law students need to anticipate a more “holistic” and less State-centric view of law and legal regulation. States cannot seek to participate and benefit from the globalisation of trade and industry without also accepting other aspects of this globalisation process. Indeed, standards viewed as a form of global governance will be necessary to ensure that the benefits of globalisation do not bypass the developing and emerging countries in the region.

All of this will have important ramifications for tomorrow’s Asian lawyers. It will therefore be necessary for the next generation of lawyers in the region to be conversant with the following principles:

- The ways in which other important disciplines – politics, commerce, financial markets, capital, cultural values, indigenous rights – impact upon and are affected by the law.

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<sup>7</sup> “Talking about Death: The High Court of Australia and the Death Penalty” (address to the Criminal Law Association (Victoria) and Reprieve Australia, 6 October 2003).

- The ways in which international law norms develop and/or impact on domestic regulatory regimes and vice versa.
- The differences and similarities between the diverse systems of law, particularly in view of the increasing convergence of procedural and substantive legal norms.
- The formulation of appropriate transnational dispute resolution mechanisms.
- The strengths and weaknesses of the current multilateral regulation.

No doubt, this is a daunting task, particularly as this is by no means an exhaustive list. Yet, tomorrow's Asian lawyers cannot afford to be seduced by the apparent "simplicity" of globalisation. Indeed, in parallel to technological advances, the world becomes "smaller" and more complex. These developments will impact significantly on the Asian region. In order for the lawyers of Asia to play their proper part in designing and implementing appropriate legal norms for the changing geopolitical and economic environment on a global, regional and domestic scale, they must be cognisant of the broad spectrum of issues that this encompasses. It is for these reasons that the tendency for Asian students to undertake law studies in countries such as Australia will continue.

## The Growth in Asian Students Studying in Australia

In the last few years, the number of foreign students coming to Australia to study has surged, with numbers doubling from 93,722 in 1994 to 190,606 in 2001.<sup>8</sup> Education has become Australia's third largest service export industry. In terms of dollar value, it is a \$5 billion industry.<sup>9</sup> According to the Department of Education, Science and Technology, students from around 200 different countries come to Australia to study.<sup>10</sup> One of the largest pools of students comes from North and South-east Asia, which accounts for approximately 80% of the total student visas issued.<sup>11</sup> In 2003, the top ten Asian Countries in terms of foreign student enrolments in Australia were China, Hong Kong, Singapore, Malaysia, Indonesia, South Korea, Japan, Thailand, India, and Taiwan (see Appendix 1).

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8 Department of Education, Science, and Technology, AEI – International Education Network, *Recent Annual Statistics*: <<http://aei.dest.gov.au/general/stats/StudentVisaData/RecentAnnualData/RecentData.htm>>.

9 Speech by the Hon Dr Brendan Nelson, "Engaging the World through Education", Federal House of Representatives (October 2003), p 6.

10 D J Phillips, *supra* note 9 at 5.

The largest growth of foreign students over this period came from China and India at 38% and 23% respectively.<sup>12</sup>

With the growth of the education sector as a commercial service provider, Australia's Minister for Education, Dr Brendan Nelson, noted in a recent speech some emerging concerns:

The greatest risk is damage to Australia's reputation for quality. There are three main risks to quality – inadequate inputs, inadequate process and insufficient outcome ... Australian providers will need to meet minimum standards of curriculum, teaching and infrastructure inputs that are fit for the purpose wherever they are provided ... Graduates of Australian programs, wherever and however they are provided, will need to be able to demonstrate sound outcomes. Failure in one area can do damage to the entire reputation of Australian education.<sup>13</sup>

This highlights a relentless challenge for universities and academics to make certain the learning outcomes of foreign students are of a consistently high standard, which is not a straightforward task given the diverse educational backgrounds of these students. The difficulties are further compounded where English is not the student's primary language pre-university. Moreover, their educational emphasis, delivery methods, and knowledge accumulation techniques might differ from Australia's or even the Anglo-American tradition.

Australia does have an advantage over education providers in countries like the UK, with a sizable multicultural population helping to ease the transitional and adjustment process for foreign Asian students. Most of these students tend to choose to study in large Australian cities, with 65% converging on Sydney and Melbourne,<sup>14</sup> where most of the Asian migrants reside. Still, the diversity in educational background, ethnicity, and motivation continues to plague foreign students' ability to deal with the transition into an Australian or Anglo education system.<sup>15</sup>

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11 D J Phillips, *supra* note 9 at 22.

12 Department of Education, Science, and Technology, *AEI Market Indicator Data for February 2004*: <<http://aei.dest.gov.au/general/interest/04Interest08.htm>>.

13 D J Phillips, *supra* note 9 at 15.

14 D J Phillips, *supra* note 9 at 7.

15 C McInnis, R James and C McNaught, *First Year on Campus: Diversity in the Initial Experiences of Australian Undergraduates* (Working Paper Series, Centre for the Study of Higher Education, University of Melbourne, 1995).

No matter the subject matter, a recurrent challenge for any teacher is to communicate ideas to the students within a semester of 13–14 weeks. Even if foreign Asian students pass the Institute English Language Studies English requirements, it is difficult for academics to be certain that the correct or intended message is received during lectures and tutorials. Recent studies have found that more than half of the foreign Asian students surveyed had a weak command of the English language. As a result, simply keeping up with lectures and tutorials becomes a formidable task.<sup>16</sup> Although the language factor could be overcome with language coaching in the course of their university studies, there are other deep-rooted and fundamental factors to consider.

### Educational Approach and Cultural Mindset in Asian Countries

The massive and rapid industrialisation process of Asian countries over the last three decades has exacerbated the demand for skilled labour, causing a tendency for their education system to be based on quantity, not quality of labour. Thus, intensive learning styles and factory-like “rolling off” of new graduates is considered to be a necessary policy to meet industrial demands.<sup>17</sup> Asian students become prone to memorising vast amounts of information without any time for thought, analysis or critical thinking. This method of learning is symptomatic across all levels of education, from primary to university.<sup>18</sup> Moreover, Asian countries’ educational curriculums do not regard oral presentations as an essential aspect of assessment. Class presentation and participation would be an alien concept for most of them.

As a result, Asian students’ abilities to develop their own arguments and critical thinking are sometimes largely neglected. Their learning process tends to focus on finding solutions or answers to match the questions, without sparing much thought or concern for understanding or appreciating the implications of the knowledge conveyed in classes. With examinations and tests the main forms of assessments,

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16 R Burns, “Study and Stress among First Year Overseas Students in an Australia University” (1991) 10 *Higher Education Research and Development* 61 at 61-76.

17 A Chodhury and I Islam, *The Newly Industrialising Economies of East Asia* (London: Routledge, 1993) 146-147, 159-161.

18 The concepts of critical thinking and developing arguments are constant challenges for foreign Asian students, especially in their first year at an Australian University: D J Phillips, *supra* note 16 at 65-67.

their time and effort is devoted to preparing how to answer questions rather than on the content of what is being taught.

## An Educative Process to Meet the Demands of Asian Law Students

Naturally, all of these developments raise questions as to how we should address the demands of these globalised Asian law students in Australia. This process, the experience and expertise of the educators and the makeup of the teaching curriculum must be adapted to reflect these challenges. This section intends to address some broad key requirements of this process.

### *The Educative Process*

“Traditional” teaching through a lecture/seminar system may not be sufficient to serve the needs of tomorrow’s Asian lawyers. Of course, some components of instruction are appropriate but it will become necessary to include greater practical elements as part of an Australian law course. Simulations, compulsory advocacy exercises and placements with “real world” organisations will help the Asian law student to become accustomed to the evolving nature of the legal process.

No doubt, many Australian universities attempt to facilitate some of these activities; however, more needs to be done. This must be done without compromising the academic integrity of an Australian law degree in terms of content and rigour.

In addressing some of the problems mentioned earlier, it would be ideal for Asian students to have undergone an adequate orientation program that may help them to bridge some of the problems arising from differences in the educational approach and learning culture adopted in Australia. Clearly any associated additional costs and time considerations might make Australia a less attractive proposition for Asian students, unless there are greater incentives to do so, for instance through the professional accreditation process in their home country.

### *The Educators*

Australian law schools must recognise the need to engage faculty members from a diverse range of background experience, particularly those familiar with relevant disciplines and the region as a whole. It is important that students receive

instruction and guidance from educators who approach contemporary legal issues from different and relevant perspectives. This will help to enhance an understanding of the interaction between law and other disciplines.

This means that more resources need to be invested in formulating these specific teaching programs and training. For instance, there is a growing awareness amongst some law teachers of the need to be more sensitive and adopt cross-cultural approaches to legal education.<sup>19</sup> Law schools in the US, which have long experienced teaching US laws to foreign LLM students, continue to refine their teaching methods and contents to address the above issues.<sup>20</sup>

### *The Curriculum*

This is the area where perhaps the most significant changes can be made on an ongoing basis. Without being overly dramatic, it is crucial that the law school curriculum is constantly assessed and revised so that students are offered relevant, contemporary units of study. Just as the law itself must constantly adapt to changes in technology, politics, market forces and socio-economic developments, so must the areas of study undertaken by future lawyers of the region be influenced by the demands of globalisation.

In recent years in Australia we have seen new “cutting edge” units of study being offered at law schools. These provide overseas students with the expertise to incorporate relevant skills into the complex, changing economic, political and social climate in their home countries, such as international advocacy, space law, biomedical law and bioethics, quantitative methods in law and environmental management law. Courses in international and comparative law should also be made compulsory in the standard Australian law degree.<sup>21</sup> Law students from around the world, including the large number of Asian students in Australian law schools, are at the forefront of this emerging process of the globalisation of legal regulation. It is incumbent on our academic institutions to equip them appropriately to actively participate in these ongoing developments. However, this does not deny the

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19 S Bryant, “The Five Habits: Building Cross-cultural Competence in Lawyers” (2001) *Clinical Law Review* 33 at 33-111.

20 M Edwards, “Teaching Foreign LLM Students about US Legal Scholarship” (2002) 52(1 and 2) *Journal of Legal Education* 520 at 520-532.

21 This suggestion is similar to the requirement that all law degrees in Europe offer a compulsory subject in European Union Law.

challenges associated with the development of an appropriate cross-cultural educational curriculum.

## Comparing Apples and Oranges: Experiences in Teaching Economics and Business Law to Asian Students

Recent statistics have shown that three out of five foreign students choose to pursue information technology and business-related degrees,<sup>22</sup> as there is a perception amongst these students and their parents that skills obtained from business degrees would provide them with the highest return for their investment. Since most business undergraduate degrees in Australia include compulsory commercial law and economics subjects,<sup>23</sup> Asian students have to overcome the difficulties associated with studying these two broad areas.

These issues are highlighted by the case study below, which narrates one of the author's experiences in teaching economics and business law to Asian students in Australia and New Zealand.

For foreign Asian students coming from rapidly industrialising economies, where business information is prevalent in their daily lives, there is an implied assumption that learning economics may not be too alienating, compared to law subjects whose content may be significantly different to their own legal system. In addition, subjects about Asian economies are widely available and taught in every university in Australia.<sup>24</sup> As a result, foreign Asian students are more likely to have some affinity to the business subject matter and hence find studying these subjects easier.

Yet, many foreign Asian students still find economics a difficult subject to comprehend and study. Two academics in the School of Finance and Economics at University of Technology, Sydney surveyed a sizable number of local and foreign students in 2003, uncovering problems experienced by local and foreign students in undergraduate first and second year economics subjects. The surveys separated the responses of local and foreign students (including Asian students) and the results indicated two trends.

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22 D J Phillips, *supra* note 9 at 7.

23 Department of Education, Science and Technology, "Which University?": <http://www.dest.gov.au/tenfields/>.

24 M Edwards, *supra* note 23.

First, foreign students found that their secondary education was not adequate to prepare them for university education and they lacked important skills such as note-taking during lectures, self-discipline and working in an independent learning environment. Further, the survey revealed foreign students had problems with tutorial participation and written assignments, more so than local students, presumably due to language factors.<sup>25</sup> Secondly, many found the textbooks difficult to comprehend because they were forced to translate many keywords into their own language. More surprisingly, it is comparatively easier for them to learn from textbooks than lectures. Yet, those who attended lectures and tutorials tended to have better learning outcomes and results.<sup>26</sup>

In addition to the results highlighted by this survey, many Asian students have found the logical imperatives of economic analysis and its way of thinking difficult to follow, particularly where this subject requires the student to understand how each topic is interlinked. For this reason, employing basic techniques, such as repeating simple key concepts and linkages between topics in class, is perhaps the only proven way to ensure that students have understood issues covered in previous lectures and tutorials. Even if this technique is effective, it is a labour-intensive and time-consuming exercise.

Time-proven teaching methods, such as an interactive learning environment, are the most effective in encouraging students to learn and probe deeper into the topic. Equally important is the development of critical thinking, the deconstruction of the concepts and linking them to earlier topics covered. The levels of absorption appear to improve when Asian students are given "real" economic problems to analyse. For example, discussing topics such as the recent Asian Economic Crisis in 1997 seemed to help them make stronger connections between economic concepts taught in the curriculum and real life experience.

Catering to various learning patterns and methods is not easy to achieve. Often, many Asian students are left to fend for themselves. Even though many universities provide language support through the international student offices, they tend to only address specific aspects of the problem. There seems to be an inherent assumption among these offices that lecturers

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25 T Hutcheson and H Tse (2004) *Learning by Students at University* (Working Paper, School of Finance and Economics, University of Technology, Sydney, forthcoming) pp 5-7.

26 Department of Education, Science and Technology, supra note 25 at 8.

and tutors would be able or equipped to deal with subject-related questions of Asian students.

Law teachers in Australia may confront a similar but different set of challenges when teaching business law to Asian students. Several key factors that may help explain this include:

- 1 the Asian student's attitude towards law as a subject matter;
- 2 the legal system in the student's home country;
- 3 language and cultural barriers;
- 4 the approach, method and purpose of education;
- 5 the scope of application from acquired knowledge.

Needless to say, the impact of these factors would vary amongst students.

In points 2 and 4, it is important to highlight that Asian students come from diverse legal systems. Recently the Council of Australian Law Deans produced a guide about studying law in Australia, which explains:

The non-lawyer tends to think of the law in terms of clear rules against reprehensible behaviour such as murder or theft. In that sense we do know what is right and wrong in terms of individual behaviour. For the lawyer and the interested observer, however, these fundamental prohibitions form only a small part of the subject matter of the law. The different legal systems have surprisingly similar content in their laws but content does not determine to which family of law a particular country's legal system is said to belong. The laws of country will be said to belong to a family, depending upon the kinds of values and goals the society endorses, the roles and duties of the institutions and individuals empowered to pursue those goals, and the detailed processes through which the goals are implemented.<sup>27</sup>

It goes on to classify various legal systems of many parts of the world into four major categories. These are: common law, civil law, customary law, and the socialist system of law.<sup>28</sup>

Compared to the study of economics, law subjects appear to be much more limited in the scope of application over certain countries. Hence, for a foreign Asian student coming

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27 Council of Australian Law Deans, *Studying Law in Australia*: <http://www.cald.asn.au/slia.html> (accessed 3 December 2004) p 3.

28 T Hutcheson and H Tse, *supra* note 27.

from a different legal system, studying Australian business law will often become another subject to pass rather than something of genuine value, unless the student intended to enter a profession that required legal expertise involving the common law system (point 5).

The guide to studying law in Australia also notes:

With the internationalisation of business there is an increasing need to consider the law of more than one country or culture ... In Australia more than a third of graduates with law degrees do not practise law. Law is seen as a good general education for people desiring entry into business, banking, technology, the property market and construction and public administration. As in other countries, a large percentage of parliamentarians at the State and Federal level are qualified lawyers.<sup>29</sup>

Due to the need for a global approach to business and political interactions, Asian students, as well as local students, would need to appreciate business law not as a compulsory subject but as a tool to facilitate the workings of international commerce and political relations.<sup>30</sup>

This is not to suggest that different legal systems of education should be amalgamated to meet the challenges of globalisation, though the distinction between certain areas of civil law and common law jurisdictions is decreasing, for example the application of the Vienna Convention of the International Sale of Goods. General principles of effective legal education and knowledge of cross-jurisdictional procedures should prevail in teaching business law for the generation of global business students.<sup>31</sup>

Australian law schools have over the last few years increasingly been aware of the need to invest and develop a much more international approach to legal education. Professor David Barker, the Dean of the Faculty of Law at the University of Technology, Sydney has noted:

The process of internationalisation in Australia has begun, but the internationalisation of law will continue at an even

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29 T Hutcheson and H Tse, *supra* note 27 at 5, 17.

30 For further discussions about a competitive market and a strong legal structure, see B Black, "The Legal and Institutional Preconditions for Strong Securities Markets" (2001) 48 *UCLA Law Review* 781 at 781-855.

31 For more on globalisation of legal and judicial education, see J Wallace, "Globalisation of Judicial Education" (2003) 28 *Yale Journal of International Law* 355 at 355-364.

faster pace, thus minimising the parochial attitudes which some would say have characterised legal education.<sup>32</sup>

Drawing from the experience of the economics department, a possible strategy to improve Asian students' interest in studying law as part of their business degrees is to include electives in Asian law subjects. However, more research will need to be undertaken before resources are devoted to this area. There would need to be a significant number of students enrolling in these subjects for it to be a financially viable option.

Similar to the study of economics, Asian students might find studying law a tedious task, particularly for those who are weak in their command of the English language. There are those who argue that legal language is discriminatory and biased towards some deep-rooted traditions and culture that marginalise others.<sup>33</sup> A more moderate view would be that the purpose of legal education is to train law students to think like lawyers.<sup>34</sup>

One option law schools in Australia could consider to assist foreign students with their language and subject-related problems is to draw on Macquarie University's experiences in the Master of International Relations by coursework, where a program-based part-time tutor is employed to help foreign students with specific language problems. Both students and lecturers alike have positively received this facility.

Lastly, in regard to point 1, experiences and perceptions of the law by Asian students will vary. In some countries, such as Singapore, the law and law enforcement officials have wide powers and are highly regarded. The position may be different in other countries. Any differences in value systems towards the law would certainly impact on the Asian student's learning approach and attitude to the subject matter.

Taking into consideration all the above, although Australian laws are being taught, Asian students could be motivated by the connection between the themes and general principles of Australian business laws and international business norms. Particularly for those considering applying for professional

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32 D Barker, "Beyond Australia and the Pacific Rim: Challenges for the Internationalisation of Australian Legal Education" (2002) 21 *Pennsylvania State International Law Review* 88.

33 G Shepherd, "No African-American Lawyers Allowed: The Inefficient Racism of the ABA's Accreditation of Law Schools" (2003) 53(1) *Journal of Legal Education* 103 at 103-153.

34 J Kleefeld, "Rethinking 'Like a Lawyer': An Incrementalist's Proposal to First-Year Curriculum Reform" (2002) 53(2) *Journal of Legal Education* 254 at 254-266.

accreditation like accountancy, the emphasis of convergence of securities and financial sectors laws have encouraged greater interest among Asian students to shift their attitudes towards studying law.

In addition, business laws are not merely rules to be portrayed as best practice. For example, the law of contracts, which has often been neglected in Asian business culture because “building business relations” has traditionally taken precedence over written documents, has now gained wider acceptance amongst Asian students. This is illustrated by the advances in information technology which has reduced the need for “in-person” business dealings, making written agreements a centrepiece in the new market place. In addition, contracts coagulate business transactions beyond the confines of the abstract theory of “demand and supply” in economics.

While the stories behind court cases have been of interest to some Asian students, encouraging them to engage and participate through debate is often met with only moderate enthusiasm. For those Asian students with a weak English foundation, it continues to pose a challenge in terms of communicating legal concepts and arguments, coupled with their inability to read the textbooks. More acute is the problem of Asian students’ lack of ability to develop arguments in their written assignments. These reasons were documented above. Yet these observations are not unique to teaching law. They apply to the teaching of politics and international relations to Asian students where developing key arguments is central to essay writing.

## An Innovative Project: Teaching Australian LLM Program in China Using Mandarin

With the increase in the number of Asian students in Australia, a huge challenge for any educational provider is to maintain standards and produce quality education. Yet, proposing practicable solutions is not easy or straightforward, particularly with students from a diverse number of backgrounds. In this second case study, the author narrates her experiences from an innovative project developed by an Australian university. The lessons drawn might provide further insight into how to meet the challenges of globalising legal education.

### *Background*

The University of Technology, Sydney (UTS) prides itself on its innovative thinking. Since 2000, the Faculty of Law has been

running a special law program called “Mandarin International” in Master of Laws (LLM) and Master of Legal Studies (MLS). The basic admission requirement is a Bachelor’s degree with sufficient Mandarin language skills. This initiative brought much attention and controversy both in Australia and China. Key issues were quality control, curriculum development, class arrangement and assessment format. Throughout the process, the expectation was to deliver a quality, high standard Australian law degree program.

The first batch of students were 14 Chinese lawyers. They were selected from 10,000 applicants in Shanghai vetted by the Shanghai Justice Bureau (SJB), which is part of the Shanghai Municipal Government. The selection processes were strict and lengthy. Some of the criteria were age, work experience and educational background. In addition, two elimination examinations were held to test the candidates on legal knowledge and basic English skills. A short-list of candidates then enrolled as full-time students at Fudan University in Shanghai,<sup>35</sup> and attended one-and-a-half months of intensive English training. At the end of the course, SJB covered the cost of the tuition for those successful candidates.<sup>36</sup>

UTS Law Faculty provided considerable resources to develop this course as it had to be delivered in Mandarin. A Chinese version of the curriculum, readings and lecture framework had to be developed from the ground up.

By December 2000, all of the 14 students in the first cohort successfully graduated. An LLM degree awarded by UTS gave these students significant advantages in China’s job market. One student is now a very successful lawyer in China. He owns three firms – one in Hong Kong, another in Shanghai and one in Silicon Valley, USA. Another student, Bailey Xu, set up his own practice in Shanghai and won the 2001 Shanghai Bar Association Award for Outstanding Young Legal Practitioner.

### *Evaluation*

After eight semesters, there are several lessons to be learned from these experiences. The key achievements and lessons are highlighted below.

The achievements of the program were:

- To bridge some of the difficulties for Chinese students coming from a very different legal system. In so doing,

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35 Fudan University is a prestigious university in China.

36 Some students had to agree to a contract with SJB to stay in Shanghai and work for at least three years upon the completion of the program.

the program played a part in the education of the next generation of lawyers in a world of converging international legal principles.

- Achieving exponential growth in student enrolments. In 2001, the program grew to 55 in Beijing and 36 in Shanghai. By 2003, more than 100 applications were received in the Beijing program alone.
- Developing a set of bilingual curricula and readings for an Australian degree consistent with other postgraduate programs. More than 20 bilingual researchers, who drafted the course outline and curriculum, assisted the faculty. This approach to preparing materials proved to be a successful way of solving language difficulties.
- Many international law subjects were very well received and popular with the students, such as international business law, international banking and financial laws. Topics discussing the WTO, World Bank and International Treaties were very informative for those involved in China's export-orientated industries.
- The students' performances were satisfactory in most of the subjects with an extremely low failure rate. Indeed, a large percentage of students scored a credit or better average in their degree.

The lessons learnt were:

- This is an innovative program running on a basic faculty academic and administrative infrastructure. In reality, it required a separate administrative structure, including bilingual administrative staff, curriculum development personnel and student liaison. In hindsight, all of this should have been in place before the course commenced. Naturally, the set-up costs were considerable.
- Due to the bilingual requirements, a large contingent of support staff was needed. The selection of personnel required extensive consideration. For example, the translators needed extensive legal knowledge in both common law and Chinese legal systems. This was vital to the communication of multifaceted legal concepts to the students. It is not surprising that these skills are rare and expensive.
- The Chinese students from a very different legal system experienced a steep learning curve. Ideally, an orientation program would be implemented to introduce Australia's legal attributes and the rationality of a common law system to the Chinese students.

- The design of the course would be geared towards a more international perspective. Internationally focused subjects were the most popular and there was greater acceptance and interest in the international legal frameworks.
- Assessment methods and criteria were difficult to design. Initially, the program allowed students to submit their assignments in either Chinese or English. Lecturers assessed the English texts relatively easily, while Chinese texts had to be translated before they could be assessed. This created a number of problems, such as delays in marking and occasionally concerns were raised regarding disparities between the translated version and the original work submitted. The program was subsequently altered so that every assignment was required to be submitted in Chinese. However, the amount of the translation work doubled and so did the associated costs.
- The cultural differences in an Australian-centred program were probably the most difficult to overcome. The lack of both critical thinking skills and the ability to develop arguments were the two main issues. This is because their educational system is different from that of Australia's. Much of Australia's legal education requires understanding, analysis, and the ability to develop arguments, which Chinese students are not able to learn in a short span of time.

After eight semesters, the UTS Law Faculty decided to close the Mandarin International Program for a variety of reasons. The University of Canberra will offer a similar course soon, and has started to recruit Chinese students. No matter which Australian legal education provider takes on this lucrative project, they will be confronted with both existing and new challenges. A well-designed orientation program for Chinese students would be an indispensable feature for a Mandarin International law program to be sustainable. Much like Mao's "long-march", the cost will be just as high as the rewards.

## Conclusion

Australian education providers, particularly at the university level, have developed into a key export service industry over the last two decades. However, commercialisation does pose certain downsides if the courses are not well managed or designed. Business degrees are likely to be in constant demand. Thus, Asian students will continue to study core subjects like

economics and business law. Whilst there will be some similar problems with the two subjects, particularly the weakness in the students' command of the English language, studying law subjects will pose greater difficulties for them.

Law teachers might design a short orientation seminar course to orientate the students' mindset about the Australian legal system and doctrines, so that keeping up with the local students is not too difficult. In addition, essential skills such as note-taking could be taught. Alternatively, a separate business law subject could be made available for Asian students with the emphasis on comparative legal structures in the context of globalisation. This poses other problems, like the depth of knowledge the students would acquire given the timeframe of 13–14 weeks per semester. In the worst-case scenario, these students might end up knowing little of any legal system. Then again, if the students were continually obliged to study an alien legal system with little scope of application post-degree, both the teachers and students would find the teaching-learning process difficult, affecting the students' interest and grades in the subject matter. It is therefore important that there is further research into appropriate methods of teaching Asian students in Australian law schools, particularly given the complexities associated with globalisation.

The challenges of the 21st century are daunting for all mankind. Rapid developments in technology, changes in the geopolitical climate and the recognition of issues of global concern will demand that the legal processes respond in an appropriate manner. Despite the many problems associated with globalisation, it is a trend that is irreversible. This will, in turn, require more effective and sensitive multilateral legal regulation in many areas. The changes associated with globalisation are having an inordinate effect on the Asian region, with the result that many Asian students are seeking to enhance their "global" perspective by undertaking law degrees in Australia. As a result, it is important to put into place an educative process that will best equip the lawyers of tomorrow in the Asian region to operate effectively in this changing environment and enable them to preserve the important role of law in the conduct of contemporary domestic and transnational relations.

## APPENDIX 1

### Year 2003 Market Indicator Data Student Enrolments in Australia from Top Ten Source Countries

<b>Country</b>	<b>% Change 2002 – 2003</b>
China	20.1%
Hong Kong	7.7%
Korea, Republic of (South)	18.8%
Indonesia	-3.1%
Malaysia	12.8%
Japan	9.6%
Thailand	8.8%
India	26.6%
United States of America	10.2%
Singapore	-1.8%
Other Countries	7.6%

Source: Department of Education, Science and Technology.